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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 691

UNITED STATES OF AMERICA, PETITIONER

v.

UMBERTO ANASTASIO, ALSO KNOWN AS
ALBERT ANASTASIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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Opinions Below

The opinions in the Court of Appeals, set forth in the Appendix to the Petition, pp. 22-49, are reported at 226 F. 2d 912. The findings of fact and conclusions of law of the District Court appear in the record (R. 12-27) and are reported at 120 F. Supp. 435.

Jurisdiction

The judgment of the Court of Appeals was entered on September 19, 1955 (Appendix to Petition, p. 47). A petition for rehearing was denied on November 16, 1955 (Appendix to Petition, p. 48). The petition for a writ of certiorari was filed on February 14, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

Question Presented

Whether the Court of Appeals erred in finding that the government had failed to prove its charges that the respondent procured his naturalization fraudulently and illegally.

Statute Involved

Section 701 of the Nationality Act of 1940 as added by the Second War Powers Act approved March 27, 1942 (56 Stat. 182; 50 U. S. C. app. 640; 8 U. S. C. 1942 supp. 1001), provided as follows:

> Notwithstanding the provisions of sections 303 and 326 of this Act, any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who, having been lawfully admitted to the United States, including its Territories and possessions, shall have been at the time of his enlistment or induction a resident thereof, may be naturalized upon compliance with all the requirements of the naturalization laws except that (1) no declaration of intention and no period of residence within the United States or any State shall be required; (2) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner; (3) the petitioner shall not be required to speak the English language, sign his petition in his own handwriting, or meet any educational test; and (4) no fee shall be charged or collected for making, filing, or docketing the petition for naturalization, or for the final hearing thereon, or for the certification of naturalization, if issued: Provided, however, That (1) there shall be included in the petition the affidavits of at least two credible

witnesses, citizens of the United States, stating that each such witness personally knows the petitioner to be a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, (2) the service of the petitioner in the military or naval forces of the United States shall be proved by affidavits, forming part of the petition, of at least two citizens of the United States, members or former members during the present war of the military or naval forces of the noncommissioned or warrant officer grade or higher (who may be the witnesses described in clause (1) of this proviso), or by a duly authenticated copy of the record of the executive department having custody of the record of petitioner's service, showing that the petitioner is or was during the present war a member serving honorably in such armed forces, and (3) the petition shall be filed not later than one year after the termination of the effective period of those titles of the Second War Powers Act, 1942, for which the effective period is specified in the last title thereof. The petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses required by the foregoing proviso shall have appeared before and been examined by a representative of the Immigration and Naturalization Service.

Statement

On June 29, 1943 while actively serving in the United States Army, respondent was naturalized by the Common Pleas Court of Lebanon County at Lebanon, Pennsylvania, pursuant to Section 701 of the Nationality Act of 1940, *supra*. On December 9, 1952 this action was instituted to cancel such naturalization and the certificate of arrival which had been isued by the Immigation and Naturaliza-

tion Service on April 28, 1943 and had been filed with respondent's naturalization petition by the Deputy Clerk of said Court (Pltf's. Exs. 2 and 3; R. 36, 179, 180).

Respondent had arrived at the Port of New York on September 12, 1917 as a member of the crew of the S. S. Sardegna, of foreign registry (Pltf's. Ex. 16; R. 37, 199). As required by statute (39 Stat. 896-897), the master of the ship delivered to the principal immigration and naturalization officer in charge of the port a crew list also known as a manifest containing the names of all aliens employed on the ship and other data including their respective positions in the ship's company and when and where each shipped or was engaged. Respondent's name appears on line 25 of the crew list together with all the other pertinent data (R. 43).

Respondent and the other members of the crew were inspected by Inspector Pearsall, an immigation inspector who signed his name and title on the crew list which became a permanent immigration record (Pltf's. Ex. 1; R. 36, 175; Pltf's. Ex. 16; R. 37, 199; R. 51). Subsequent to such inspection respondent was granted shore leave. He did not return to the ship. Thereafter he made his home in the United States.

On April 4, 1931 respondent applied for a certificate of registry under the Act of March 2, 1929 (45 Stat. 1512). The crew list was examined and the data concerning respondent's entry into the United States was copied therefrom and incorporated in the certificate of registry which was issued (Pltf's. Ex. 1; R. 36, 174-175; Pltf's. Ex. 18; R. 47, 203).

Although the government contends that the certificate of registry was procured by fraud because the respondent did not disclose five arrests, such certificate has never been revoked and is still a part of the permanent records of the Immigration and Naturalization Service (R. 63).

On October 30, 1931 respondent filed a Declaration of Intention to become a citizen in the United States District Court for the Eastern District of New York (Deft's. Ex. 6; R. 152, 218). On December 27, 1933 he filed a petition for naturalization in the same Court. In connection with such petition he submitted an affidavit dated March 1, 1934 setting forth his complete arrest record (Pltf's. Ex. 13; R. 36, 181-183). The District Director of Immigation and Naturalization filed objections to the granting of citizenship (Deft's. Ex. 7; R. 152, 223). On February 27, 1935 respondent consented to the dismissal of his petition (Deft's. Ex. 8; R. 152, 225).

On July 30, 1942 respondent enlisted in the United States Army (R. 11, 143).

On December 30, 1942 he executed Form N-403 prescribed and furnished by the Commissioner of Immigration and Naturalization entitled "Preliminary Form for Petition for Naturalization Under Sections 701 or 702 of the Nationality Act of 1940" (Pltf's. Ex. 14; R. 36, 184). Sections 701 to 705 inclusive had been added to the Nationality Act of 1940 to facilitate the naturalization of persons then serving in the armed forces who had "been lawfully admitted to the United States" (56 Stat. 182).

The Form N-403, and a "Personal History Statement" executed by respondent were forwarded by his Commanding Officer to the Chief Examiner of the Immigration and Naturalization Service at Philadelphia, Pennsylvania (Pltf's. Ex. 15; R. 36, 186-197). The Commanding Officer annexed thereto a statement that respondent's character was excellent and that approval of his application was recommended.

Respondent's application was then sent to the Records and Verification Division of the Immigration and Naturalization Service which maintains arrival records at the Port of New York. There a verification clerk located the crew

list of the ship upon which the respondent had arrived, and on April 23, 1943 he made the following entry on the reverse side of respondent's application:

"Anastasio, Umberto
9-12-17
Sardegna
Data taken from crew list—
Deserting Seaman
No record of admission for permanent residence."

On April 28, 1943 a certificate of arrival was issued which certified that the respondent had arrived at the Port of New York, New York, on September 12, 1917 and that the manner of arrival was the S. S. Sardegna (Pltf's. Ex. 3; R. 36, 180). On June 29, 1943 Mr. George Z. Reich, a designated naturalization examiner, proceeded to Indiantown Gap, Pennsylvania, where respondent was stationed, and conducted a preliminary hearing on his application (R. 77). Mr. Reich had been appointed as a naturalization examiner in 1939 and from that time until his examination of respondent had processed between eight thousand to nine thousand naturalization applications (R. 91).

Mr. Reich testified that he had in his possession on June 29, 1943 the file of the Immigration and Naturalization Service relating to the first petition for naturalization of respondent which had been denied in 1935, and that such file contained a police certificate and respondent's affidavit of March 1, 1934, both of which set forth his arrests (R. 82, 95, 108, 132). He also testified that respondent disclosed his arrests during the interrogation (R. 131-132).

Subsequent to the hearing by Mr. Reich, he accompanied respondent and the other applicants from his army post to the Common Pleas Court at Lebanon, Pennsylvania, where the petitions for naturalization were filed (Pltf's. Ex. 2; R. 36, 179). A final hearing on such petitions was held before the Court on the same day (R. 78). Mr. Reich, appearing on behalf of the United States, recommended that

all the petitions, including respondent's, be granted (R. 112). The Court accepted such recommendation and admitted the respondent and the other soldiers to citizenship (R. 112).

Thereafter, respondent continued his active service in the United States Army until honorably discharged on November 12, 1944. He then held the rank of Technical Sergeant (Deft's. Ex. 5; R. 150, 217).

The District Court ordered that the naturalization be cancelled but refused to cancel the certificate of arrival (R. 22-23, 28-29).

The Court of Appeals, District Judge Lord dissenting, reversed and vacated the judgment of the District Court. (Appendix to Petition, pp. 22-49.) The majority stated as follows (p. 30):

> "In our opinion the record fails to establish the government was deceived into granting the defendant citizenship in 1943 pursuant to the independent naturalization proceeding which he instituted that year.
>
> "Moreover, we believe the record affirmatively establishes by the undisputed testimony of the government's key witness, and the inferences inevitably flowing from that testimony, that the defendant did not in 1943 practice fraud or illegality upon the government."

A petition for rehearing, three judges dissenting, was denied *per curiam.*

Argument

This Court has recognized that denaturalization may result in the loss of "all that makes life worth living". *Ng Fung Ho* v. *White,* 259 U. S. 276, 284; *Knauer* v. *United States,* 328 U. S. 654, 659. Because of these grave conse-

quences, the principles applicable to such an action have been often restated and consistently applied. They are: first, that a burden of proof rests on the government which is substantially identical with that required in criminal cases, namely, proof beyond a reasonable doubt; second, that the government is limited to the matters charged in its complaint; and third, that the facts and law should be construed as far as is reasonably possible in favor of the citizen. *Klaprott* v. *United States*, 335 U. S. 601, 612; *Schneiderman* v. *United States*, 320 U. S. 118, 122, 158, 160; *Baumgartner* v. *United States*, 322 U. S. 665, 670; *United States* v. *Minker*, 350 U. S. 179, 187-188.

Applying these principles to the instant case, the Court of Appeals found that the government had failed to sustain its charges of fraud and illegality. (Appendix to Petition, pp. 30-31.) It found, on the one hand, that the record affirmatively established that the defendant did not practice fraud or illegality, and on the other, that the record failed to establish that the government had been deceived into recommending citizenship.

The Court of Appeals was fortified in its conclusions by the fact that respondent was naturalized under the liberal provisions of Section 701 of the Nationality Act of 1940. (Appendix to Petition, pp. 36-37.) This statute, which expired on December 31, 1946 (59 Stat. 658), had been enacted in time of war to confer special benefits on aliens actively serving in our armed forces. They had won favored treatment in their quest for citizenship by answering the call to arms at a time of national peril. Moreover, we were anxious not to expose our servicemen to the danger that in the event of capture by the armed forces of their native countries they might be treated as deserters or traitors rather than as prisoners of war. *Monthly Review of the Immigration and Naturalization Service* (Vol. 1, No. 3, Sept. 1943).

Respondent, an Italian national at the time of his enlistment, who served honorably with the United States

Army from July 30, 1942 to November 12, 1944 and who had attained the rank of Technical Sergeant at the time of his discharge, was clearly one of the intended beneficiaries of Section 701.

The Court of Appeals held solely that the government's proof was insufficient to sustain its charges. This holding is manifestly correct. The government seeks to inject into the case questions of estoppel and constructive notice which are wholly unrelated to the charges in the complaint and the decision of the Court.

1. The government contends that respondent committed fraud by alleging in his petition for naturalization that he had been lawfully admitted to the United States. To this contention there are two complete answers.

The first is that the petition must be read together with the "Preliminary Form for Petition for Naturalization" (Pltff's. Ex. 14; R. 36, 184). At the very beginning of such Form, respondent stated:

> "I desire to file a petition for naturalization as a citizen of the United States, and submit herewith a statement of facts to be used in filing such petition."

In the eighth paragraph of the Form, he further stated:

> "My lawful admission to the United States, its Territories, or its possessions, was at New York, New York under the name of Umberto Anastasio on September 12, 1917 on the S. S. Sardina. I arrived as a Seaman."

That the naturalization examiner took due note of this information is evidenced by his testimony that he placed his check marks next to each of the items in the eighth paragraph including respondent's statement that he arrived as a seaman (R. 103). Thus the record negates fraud by showing conclusively that the respondent made a truthful and correct disclosure of the facts respecting

his arrival and that the government had full knowledge thereof. *United States* v. *Tuteur*, 215 F. 2d 415, 418.

The second answer to the government's contention is that arrival as a seaman was in fact a lawful admission for the purposes of Section 701 of the Nationality Act of 1940, *supra*. Section 701 specified that its benefits were to be available to aliens who had been "lawfully admitted to the United States". Civilian applicants for naturalization, on the other hand, were required by the earlier enacted sections of the Nationality Act of 1940 to have entered or been admitted for permanent residence.[1] This significant distinction led the Commissioner of Immigration and Naturalization and the courts to hold that persons admitted as seamen had been lawfully admitted and qualified for naturalization under Section 701.

Such construction is reflected in *Petition of Bozin*, 70 F. Supp. 5, which held that entry as a seaman was a lawful admission for the purposes of Section 701. In that case the Court said (p. 6):

> "The Commissioner of Immigration and Naturalization has construed 'lawfully admitted' • • • to incude persons admitted as students, visitors, or seamen. Petition of Weber, D. C. E. D. N. Y. 1945, 61 F. Supp. 683, citing Monthly Review, Immigration and Naturalization Service, September 1943, Vol. 1, p. 7.
>
> "The brief on behalf of the Commissioner sets forth the following administrative interpretation • • • 'Under the construction placed upon this section by the Immigration and Naturalization Service, there is no requirement that a petitioner's admission shall have been for permanent residence. The view has

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[1] For example: Section 331, 54 Stat. 1153-1154; Section 332(a), 54 Stat. 1154-1155; Section 308, 54 Stat. 1143; Section 316(a), 54 Stat. 1146; Section 307(d)(2), 54 Stat. 1143; Section 319(b), 54 Stat. 1148; Section 329(b), 54 Stat. 1152.

been taken that Congress was aware of the fact that persons admitted for limited periods, who become technically subject to deportation by overstaying the period of their admission, would seek the benefits of the section.

"The Service has, accordingly, issued certificates of arrival in cases in which entry was as a seaman • • • and where the individual was subsequently ordered deported on the charge that he had remained longer in the United States than the time for which he was admitted, has nonetheless recommended the granting of his petition.' "

The District Court where the instant action was tried consistently held during the entire period Section 701 was in effect that persons who had entered the United States as seamen had been lawfully admitted to the United States. Table I annexed herewith compiled from the records of that Court indicates that no fewer than eighty-two servicemen who had arrived as seamen and had thereafter deserted their vessels and remained in the United States were granted naturalization.

It is also noteworthy that one William Loyde Watkins, a deserting seaman, was naturalized by the Common Pleas Court of Lebanon County, the same Court which naturalized respondent, on the same day, and on the recommendation of the same examiner (Deft's. Exs. 1, 2, 11; R. 149, 207-208, 209-210, 228-229).

It is undisputed that respondent arrived in the United States as a seaman and that he was granted shore leave subsequent to inspection by an immigrant inspector. Therefore his statement that he was lawfully admitted to the United States was completely truthful.

2. The government asserts that respondent obtained his citizenship illegally because the certificate of arrival filed

with his petition was invalid. It is pertinent to note, as does the government (P. 19, footnote 5), that the Immigration and Nationality Act of 1952 has eliminated illegality as a ground for revocation of citizenship. *United States* v. *Stromberg,* 227 F. 2d 903; (Section 340 (a), 8 U. S. C. 1451 (a)). Also, a certificate of arrival is no longer required in a naturalization proceeding (Section 334 (a), 8 U. S. C. 1445).

In any event the assertion of the government is without merit. Section 332 (c) of the Nationality Act of 1940, 54 Stat. 1156, required that at the time of filing the petition for naturalization a certificate from the Immigration and Naturalization Service be filed "* * * stating the date, place, and manner of petitioner's arrival in the United States * * *." The certificate of arrival filed in the instant case disclosed that respondent arrived in the United States on September 12, 1917 at New York, New York and that the manner of arrival was the S. S. Sardegna (Pltf's. Ex. 3; R. 36, 180). Thus the certificate of arrival stated the date, place, and manner of respondent's arrival. The correctness of such data is fully substantiated by the crew list. It therefore follows that the certificate of arrival contained all the statutory essentials and represented a full and complete compliance with the applicable statutory requirements.

The government argues that the certificate of arrival was based upon the registry proceedings. The evidence clearly indicates, however, that in the course of the registry proceeding, reference was made to the crew list, and a report of the information therein contained was attached to the registry application (Pltf's. Ex. 1; R. 36, 174-175). The certificate of registry copied all the data with respect to respondent's arrival from the crew list, including the date, place, and manner of such arrival (Pltf's. Ex. 18; R. 47, 203). It follows that the statutory essentials contained in the certificate of arrival are not based on the certificate of

registry, but that they, as well as the certificate of registry, originate in and rest upon the crew list.

3. The government also charges the respondent with fraud because he used as proof of his lawful admission to the United States "• • • a certificate of arrival which was based on the fraudulent 1931 record of registry" (P. 15). Such charge is untenable because as above demonstrated the respondent had been lawfully admitted and the proof thereof is the crew list, a permanent record made contemporaneously with such admission.

Moreover, the Court of Appeals, after a careful analysis of all the proof found that the government and the naturalization examiner knew at the time of respondent's naturalization, that he did not disclose his criminal record in the 1931 registry proceedings (Appendix to Petition, pp. 34-35). The Court also found that he had made a complete disclosure to the government of his criminal record in the 1933 as well as in the 1943 naturalization proceedings (Appendix to Petition, pp. 26, 35). Therefore the two basic elements of fraud were lacking: the respondent did not practice fraud and the government was not deceived.

It is to be noted further that the "Preliminary Form for Petition for Naturalization" prescribed by the Commissioner of Immigration and Naturalization for use by alien servicemen did not request the issuance of a certificate of arrival and in fact made no reference to such a certificate (Pltf's. Ex. 14; R. 36, 184-185). In contrast, the Form prescribed for use by civilian applicants was entitled "Application for a Certificate of Arrival and Preliminary Form for Petition for Citizenship" and specifically contained an application for a certificate of arrival (R. 55; Pltf's. Ex. 2); R. 156, 205). Moreover, in the instant case the certificate of arrival was not exhibited to the respondent and was filed with his petition for naturalization not by him but by the Deputy Clerk of the Common Pleas Court of Leba-

non County as appears on the face of the naturalization petition (R. 111; Pltf's. Ex. 2; R. 36, 179).

It thus appears that respondent did not request the issuance of a certificate of arrival, that he did not see it and that he did not file it with his petition. Under these circumstances the government's attempt to predicate a charge of fraud on the use of the certificate of arrival has no substance whatsoever.

4. Materiality is an essential element of the government's case in a denaturalization action. *Knauer* v. *United States, supra.* The certificate of registry issued in 1931 was not material to respondent's naturalization and therefore furnishes no basis for his denaturalization.

Respondent's application for registry was made pursuant to the Act of March 2, 1929 (45 Stat. 1512), which provided for the creation of a certificate of registry as to an alien "• • • in whose case there is no record of admission for permanent residence • • •". In a case where there was no record of admission a record would be created and it would be presumed that the admission reflected in such record was for permanent residence. In the instant case there was a record of admission, namely, the crew list. Therefore the certificate of registry did not create the record of admission but only a presumption that such admission was for permanent residence.

As above indicated, for the purposes of naturalization under Section 701 of the Nationality Act of 1940 only a lawful admission was required and not a lawful admission for permanent residence. Since the respondent had been lawfully admitted to the United States, the presumption flowing from the certificate of registry was not material to his naturalization.

Indeed the government has conceded that in servicemen's naturalization proceedings it issued certificates of arrival containing the statutory essentials and recom-

mended naturalization where entry had been effected as a seaman who subsequently deserted his ship and no record of registry had been created (R. 61-62); *Petition of Bozin, supra.*

Finally, assuming for the sake of argument, that the certificate of registry was material to respondent's naturalization, such certificate has never been revoked and is still a permanent record of the Immigration and Naturalization Service (R. 62-63). It therefore cannot furnish a basis for denaturalization.

The authority of the Commissioner to revoke certificates of registry procured through fraud or misrepresentation in accordance with procedures established by regulation was long ago sustained by the courts. *United States ex rel. Dopico* v. *Revell,* 73 F. 2d 221. In the instant case since he did not take such action, the certificate must be considered in all respects valid.

The Immigration and Nationality Act of 1952 vests such authority in the Attorney General (Section 246(a), 66 Stat. 217, 8 U. S. C. 1256(a)). Such Act also provides that a naturalization based on a record of lawful admission for permanent residence subsequently rescinded shall be subject to revocation.[2]

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[2] Section 246(a) of the Immigration and Nationality Act of 1952, 66 Stat. 217, 8 U. S. C. 1256(a), provides in pertinent part as follows:

> "If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of section 245 or 249 of this Act of any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling deportation in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this Act to the same extent as if the adjustment of status had not been made."

(*Footnote continued on following page*)

The statute therefore requires the administrative rescission of the certificate of registry as a condition precedent to denaturalization.

5. The government argues that the Court of Appeals erroneously applied a theory of estoppel and constructive notice. The complete answer to this argument is that the Court did not apply such a theory. Its decision rests solely on its finding that the government failed to prove its charges of fraud and illegality.

The dissenting opinion on the petition for rehearing contains the following language. (Appendix to Petition, pp. 48-49):

> "The present decision is contrary to our per curiam affirmance of United States v. Accardo, 208 F. 2d 632 (1954), cert. den. 347 U. S. 952 (1954), and seems to charge a naturalization court with a kind of constructive notice of any prior fraud or fraud committed by an applicant for citizenship."

In *Accardo* the respondent had sought to invoke constructive notice against the government. The Court refused to do this.

That constructive notice was not applied in the instant case appears not only from the decision of the Court but also from its *per curiam* opinion on the petition for rehearing wherein it stated:

(*Footnote continued from preceding page*)

Section 246(b), 66 Stat. 217, 8 U. S. C. 1256(b), provides as follows:

> "Any person who has become a naturalized citizen of the United States upon the basis of a record of a lawful admission for permanent residence, created as a result of an adjustment of status for which such person was not in fact eligible, and which is subsequently rescinded under subsection (a) of this section, shall be subject to the provisions of section 340 of this Act as a person whose naturalization was procured by concealment of a material fact or by willful misrepresentation."

> "On the facts of this case we do not regard our prior decision in United States v. Accardo, 208 F. 2d 632 (1954), cert. den., 347 U. S. 952 (1954), as requiring a contrary result."

It is significant that the two judges who constituted the majority in the Court of Appeals in the instant case and who joined in the *per curiam* opinion on the petition for rehearing were also two of the three judges who decided the *Accardo* case.

The dissenting opinion on the petition for rehearing also contains the following language:

> "If a naturalization examiner negligently is unaware of a fraud committed by the applicant, or if the examiner, in the exercise of his own judgment erroneously deems the fraud to be inoperative or insufficient to prevent naturalization, the examiner's negligence or error under the present ruling seems to be imputable to the naturalization court itself."

On the facts of the instant case this language is completely hypothetical. The complaint makes no reference to negligence or error on the part of the naturalization examiner. It charges that the respondent falsely alleged in his petition for naturalization that he had been lawfully admitted to the United States and that such allegation was made with the intention and for the purpose of deceiving the government (R. 4). This charge has not been sustained.

Moreover, at no point in these proceedings did the government claim that the naturalization examiner was guilty of negligence or error. On the contrary in its petition for rehearing the government specifically stated that nothing therein contained was "* * * meant directly or indirectly as any reflection whatsoever on Examiner Reich" (Petition for Rehearing, p. 4, footnote 1).

Conclusion

The decision of the Court of Appeals is based solely on its finding that the government failed to prove its charges of fraud and illegality. The Court applying the principles governing the standard of proof in denaturalization actions correctly decided that the respondent did not practice fraud and that the government was not deceived. The case presents no other issues. The issues of estoppel and constructive notice urged by the government are wholly extraneous to the charges in its complaint and the decision of the Court. It is, therefore, respectfully submitted that the petition for a writ of certiorari should be denied.

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April, 1956.

TABLE I

PETITIONS FILED AT THE UNITED STATES DISTRICT COURT, NEWARK, NEW JERSEY, UNDER SECTION 701 OF THE NATIONALITY ACT OF 1940 BY PERSONS IN THE ARMED FORCES WHO ARRIVED IN THE UNITED STATES AS SEAMEN AND DESERTED THEIR VESSELS.

Name	*No.*	*Date Entry in U. S.*	*Date Entry Armed Forces*	*Date Pet. Filed*	*Date Pet. Granted*
Joseph Dos Ramos	M-357	7/13/23	7/ 7/42	9/22/42	9/22/42
Felix Mattias Eriksson	M-413	8/ 2/37	6/15/42	11/17/42	11/17/42
Gerrit Veerman	M-505	8/ 2/35	9/14/42	3/10/43	3/10/43
Ernest Pudillo	M-595	8/27/33	12/ 2/42	4/14/43	4/14/43
Cecil Thorne	M-625	8/27/31	1/ 2/43	5/ 7/43	5/ 7/43
Alfred Riettie	M-629	8/27/26	11/25/42	5/ 7/43	5/ 7/43
Johannes J. Koops	M-632	6/10/40	10/22/42	5/ 7/43	5/ 7/43
Andor Zelinger	M-642	9/24/37	10/ 2/42	5/14/43	5/14/43
Curt Siebert	M-643	11/11/24	12/16/42	5/15/43	5/15/43
Samuel Pinkus	M-648	7/24/30	1/13/43	5/14/43	5/14/43
Henry Vedel Sorenson	M-656	4/21/26	11/ 4/42	5/21/43	5/21/43
Herman Severin	M-658	2/ 4/35	11/11/42	5/21/43	5/21/43
Stanley Holdsworth	M-675	10/ 8/22	9/ 8/42	6/ 2/43	8/31/43
Joaquim Monteiro Da Silva	M-681	5/31/28	11/11/42	8/31/43	8/31/43
Costas Sigalas	M-715	1/28/41	12/ 8/42	7/ 6/43	7/ 6/43
Bruno Dagnino	M-725	10/ 3/25	8/ 7/42	7/14/43	7/14/43
Ioannis Vassiliades	M-726	3/ 3/27	11/16/42	7/14/43	8/31/43
Robert Evangelo Leftachis	M-741	9/ 3/38	12/23/42	7/19/43	7/19/43
William John Campbell, Jr.	M-761	4/19/26	11/14/42	7/27/43	9/ 1/43
George Bartholomew Jurasov	M-766	1/ 4/37	9/ 4/42	8/ 5/43	9/ 1/43
Ernesto Giovanni Ivaldi	M-767	10/25/24	9/ 5/42	8/ 5/43	9/ 1/43
Attilio Brega	M-784	9/27/24	10/ 9/42	8/ 6/43	8/ 6/43
Mario Mendes	M-801	6/30/42	3/15/43	8/10/43	9/ 1/43
Harold Milton Dyas	M-806	5/11/37	2/19/43	8/18/43	8/18/43
Sven Algot Lundin	M-819	5/ 6/24	11/23/42	8/30/43	11/ 8/43

Table I—Continued

Name	*No.*	*Date Entry in U. S.*	*Date Entry Armed Forces*	*Date Pet. Filed*	*Date Pet. Granted*
Muldrup Theodore Tallaksen	M-821	3/25/41	11/ 6/42	9/ 1/43	11/19/43
Gavino Bazzoni	M-833	4/28/25	12/ 1/42	9/17/43	11/ 8/43
Nicola Cozas	M-837	4/19/26	11/17/42	9/17/43	9/17/43
Henri Martens	M-847	9/13/40	1/14/43	9/17/43	9/17/43
Savo Vukasovich	M-853	9/ 9/26	11/17/42	9/21/43	9/21/43
Richard Tuite	M-871	5/ 3/26	10/23/42	9/27/43	6/10/46
Mario Cadencio	M-877	4/18/42	2/13/43	9/27/43	11/ 8/43
Barnard Henry Rayment	M-878	4/23/32	11/ 3/42	9/27/43	11/ 8/43
Rolando Francisco Do	M-879	6/30/41	1/15/43	9/27/43	11/ 8/43
Antonio Diaz	M-880	6/30/42	1/15/43	9/27/43	11/ 8/43
Nicolas Frangos	M-881	10/ 1/39	2/ 3/43	9/27/43	11/ 8/43
Emilio Magoregui	M-884	7/13/27	11/27/42	9/28/43	11/ 8/43
Frank Bell	M-906	12/29/23	11/25/42	10/19/43	10/19/43
Ernest Llewellyn Nairne	M-908	11/11/27	11/25/42	10/19/43	10/19/43
Francisco Da Silva	M-915	4/21/41	2/13/43	10/26/43	12/ 3/43
Sten Hjalmar Halldin	M-917	6/17/30	12/23/42	10/26/43	12/ 3/43
Jose Dias Da Silva	M-933	12/ 3/41	2/13/43	11/ 3/43	12/ 3/43
Hubert Eckforal Box	M-936	6/26/23	12/ 5/42	11/ 5/43	12/ 6/43
David Jacob Holsteyn	M-943	5/17/24	11/14/42	12/ 3/43	1/ 3/44
Bassilios Bassilakis	M-944	11/17/42	4/ 1/43	11/24/43	12/17/43
Francisco Antonio Colale	M-955	8/26/29	9/15/42	12/ 3/43	1/ 3/44
Jean Emile Paul Guy Jadot	M-961	9/17/40	5/21/43	12/ 3/43	12/ 3/43
Jacobus Van Toor	M-974	7/ 8/41	10/28/42	12/10/43	12/10/43
Domenico Donato	M-989	11/14/26	11/ 2/42	1/ 4/44	1/14/44
Antonio Coimbra Vale	M-990	1/19/43	3/15/43	1/ 6/44	1/28/44
Vasilios Perdios	M-991	12/17/40	9/ 8/42	1/ 6/44	5/31/44
Jose Mourino Arias	M-1010	3/25/41	4/23/43	2/ 1/44	3/20/44
Edwin Adolf Jacobsen	M-1011	6/16/43	7/ 9/43	2/ 4/44	2/ 4/44

Table I—Continued

Name	*No.*	*Date Entry in U. S.*	*Date Entry Armed Forces*	*Date Pet. Filed*	*Date Pet. Granted*
James Themistocles Kaknis	M-1018	11/ 1/22	2/23/43	2/18/44	4/24/44
Arlindo Pinto	M-1024	11/10/42	4/ 6/43	2/28/44	6/11/45
Alvaro Caldas Lima	M-1029	8/29/43	12/ 8/43	3/10/44	3/10/44
Eugene William De Persio	M-1033	3/26/29	10/ 5/43	3/13/44	4/24/44
Arvo Arvid Kuivalinen	M-1036	8/ 7/41	3/26/46	3/13/44	4/24/44
Antonio Carvalho	M-1041	3/31/42	6/12/43	3/20/44	5/26/44
Adelio Gaiato	M-1044	6/13/41	6/12/43	3/20/44	4/28/44
Boguslaw Grabowski	M-1049	4/ 8/41	5/ 6/43	3/28/44	3/28/44
Hendrikus Lek	M-1058	8/20/27	11/28/42	4/14/44	4/14/44
Arthur Valente De Almaida	M-1060	8/ 9/41	7/13/43	4/18/44	4/ 9/45
Maurice William Houghton	M-1070	2/26/26	1/26/44	5/12/44	5/12/44
Lazar Nikolic	M-1089	3/16/42	3/10/43	6/19/44	7/24/44
Tony Zito	M-1092	5/28/27	9/28/43	6/23/44	8/ 7/44
Mirko Brajovic	M-1100	10/22/40	2/13/43	7/11/44	11/20/44
Paul Horvath	M-1129	1/ 3/41	1/ 6/43	9/26/44	11/20/44
William Raase	M-1151	5/13/30	10/ 8/42	11/28/44	1/20/47
Edgar Godwin Blake	M-1173	9/15/37	1/19/44	2/ 9/45	2/ 9/45
Kostas Demetrios Varkes	M-1180	1/24/36	1/ 4/44	3/ 8/45	3/ 8/45
King Chang Siow	M-1181	11/ 8/40	3/ 8/45	6/10/46	6/10/46
Erling Leonard Johansen	M-1182	4/15/40	12/ 2/42	3/ 9/45	3/ 9/45
Jose Horta	M-1185	1/25/43	10/16/44	4/ 2/45	4/ 2/45
Juan Arutro Hu Entilican	M-1211	12/ 3/28	1/23/42	7/24/45	1/23/46
Antonio Padilla	M-1213	8/11/30	11/11/42	7/26/45	5/13/46
Manoel Monteiro	M-1306	11/17/44	2/12/45	4/15/46	5/13/46
Ferdinand Erdei	M-1362	9/18/40	7/ 9/43	7/24/46	7/24/46
Kee Chu Kiang	M-1381	12/22/44	4/ 5/45	9/ 9/46	9/ 4/47
Joseph Frka	M-1382	7/23/40	6/12/44	9/11/46	9/11/46
Constantine Tinios	M-1473	3/29/42	10/ 5/42	12/18/46	12/18/46
Henry Wisse Hansen	M-1519	10/23/24	3/12/43	12/26/46	3/14/49

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 691

UNITED STATES OF AMERICA, PETITIONER

v.

UMBERTO ANASTASIO, ALSO KNOWN AS ALBERT ANASTASIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

1. Respondent contests the government's statement (Pet. 14) that he committed a fraud on the naturalization court when, in his petition for naturalization, he stated that his "lawful admission" to the United States occurred in 1917 on the ship from which he had deserted, "as shown by the certificate of my arrival attached to this petition." He argues that (Br. in Opp. 10–11) there was no fraud because entry as a seaman in 1917 would have been considered a lawful admission for naturalization purposes under the interpretation given to Section 701 of the Nationality Act of 1940 by the Immigration and Naturaliza-

the certificate of registry, it is still valid. This contention leaves intact the critical point that the registry certificate was fraudulently obtained, and therefore the reliance upon it in respondent's naturalization tainted that proceeding.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.

MAY 1956.

U. S. GOVERNMENT PRINTING OFFICE : 1956